

TEOFILO ABUEVA Y CAGASAN, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. No. 134387. September 27, 2002

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

This petition for review seeks the reversal of the decision[1] of the Court of Appeals dated November 27, 1997, in CA-G.R. No. 18212 and its resolution[2] dated May 20, 1998, denying petitioner's motion for reconsideration. The assailed decision affirmed that of the trial court in Criminal Case No. 28091-92, finding petitioner guilty of reckless imprudence resulting in homicide.[3] Petitioner now prays for acquittal.

Petitioner Teofilo Abueva y Cagasan was charged before the Regional Trial Court of Davao City, in an information which reads:

That on or about August 7, 1992, in the City of Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-mentioned accused, being an employee of BACHELOR EXPRESS, INC., and while driving a FUSO BUS (For Hire) with Plate No. KVA 211 registered under VALLACAR TRANSIT, INC. along Ecoland Terminal, Matina Davao City, and without taking due precaution to prevent injury to persons, wilfully, unlawfully and suddenly drove and moved the said motor vehicle out of the terminal building even before Lourdes Mangruban, a passenger of said bus, could properly find and safely take her seat, and that as a direct result of said negligence, recklessness and carelessness, LOURDES MANGRUBAN fell down to the cemented pavement of the terminal road and sustained the following injuries:

Intracerebral Blood; Subdural Hematoma; Cerebral Contusion and Laceration Left Temporal Area; Subdural Contusion Right Temporal Area.

which caused her death.

That immediately after LOURDES MANGRUBAN fell down, the accused wilfully, unlawfully and feloniously failed to render or lend assistance on the spot to the victim such help as may be in the hands of the accused to give.

CONTRARY TO LAW.[4]

Assisted by counsel de parte, petitioner pleaded not guilty upon arraignment.

During trial, the prosecution and the defense presented different versions of the occurrences that led to Lourdes Mangruban's death.

For the prosecution, IRENEO MANGRUBAN, the victim's brother, testified[5] that at around 6:00 A.M. of August 7, 1992, he was with his siblings Lourdes and Abundio Mangruban, and their paralyzed aunt Ginobata Mangruban. They went to the Ecoland Bus Terminal in Matina, Davao City. Lourdes was tasked to accompany their aunt to Butuan City.

At the terminal, Raul Quiblat,[6] a dispatcher for the bus company Bachelor Express, Inc., approached and informed them that a bus bound for Tacloban via Cebu and Butuan was about to leave. They were told to wait as the bus maneuvered to its proper position prior to departure. The said bus, driven by petitioner, came to a full stop in front of the terminal building. Ireneo, who was assisting his aunt, was the first one to board the bus. Lourdes was close behind. Ireneo was already inside the bus, while his aunt, on the lookout for available seats, was still standing on the second stepboard of the middle entrance. As they negotiated their way towards the back of the bus, Lourdes, with luggage in hand, was waiting on the first stepboard when the bus suddenly moved.

Due to the sudden movement, according to the witness, Lourdes fell off the bus and hit her head on the cement pavement below. The conductor shouted that a passenger fell off the bus. The bus immediately stopped, but only after moving about six meters. When the witness learned that it was Lourdes who fell off the bus, he immediately disembarked to help his sister. Ginobata, assisted by Abundio Mangruban, likewise disembarked. According to the witness, the driver did not disembark to assist Lourdes, while a dispatcher of the bus company assured them that there was nothing to worry about because the victim was not bleeding. Petitioner continued driving per his scheduled trip.

Lourdes was taken to the San Pedro Hospital where a brain scan revealed the presence of a blood clot that needed immediate surgery. The bus company refused to give financial assistance to the Mangrubans. On their own, the family raised the amount required by the hospital as downpayment for the operation. Surgery was performed but Lourdes never regained consciousness and expired five days later.

For the defense, MELQUIADES ROJAS,[7] the bus conductor, testified that on August 7, 1992, at about 6:00 A.M., while the bus of Bachelor Express, Inc., which was bound for Butuan was parked in the Ecoland Terminal, Ireneo, Lourdes, and their aunt Ginobata boarded the bus and took their seats. He handed to them their tickets, and collected their fares, and then he disembarked to remit his collections to the cashier. Thereafter, he asked for clearance from the dispatcher so the bus could leave the terminal. Raul Quiblat, the dispatcher of the bus, made a final inspection of the exterior of the bus and then instructed the conductor to go. The conductor returned to the bus, made a final check on the passengers, and blew his whistle as a signal to petitioner to commence the trip.

While the bus was already in motion, according to the witness, Lourdes Mangruban suddenly knocked on the ceiling of the bus and informed Rojas that she wanted to get off the bus. He saw Lourdes kiss and bid her aunt a safe trip. Lourdes started walking towards the exit. Rojas warned her to wait for the bus to come to a full stop before alighting but the victim did not heed the warning and continued to rush towards the exit. Rojas blew his whistle to tell petitioner to stop the bus. However, although he already gave the signal and before petitioner could put the bus to a stop at the side of the road, Lourdes, with her body facing the door, jumped out. Rojas tried to grab her arm but failed to prevent her from jumping off the bus.

TEOFILO ABUEVA, the driver of the bus and petitioner herein, testified[8] that on the 6:00 A.M. trip of August 7, 1992, after he was given the signal by the dispatcher to leave, he started the engine of the bus. After having traveled about five to six meters, he heard shouts from the people at the terminal, saying that someone had jumped from the bus. He stopped the bus, immediately alighted, and saw the dispatcher and a terminal helper assisting the woman who had jumped off. He saw them carry the woman to a public utility vehicle. He then asked the one in-charge of the terminal if they could leave to continue the trip. After he was told that they could and that the victim was going to be taken to the hospital, he started to drive the bus on its way.

QUINTIN BORROMEO, a laborer at the Ecoland Terminal, testified[9] that he boarded the bus bound for Tacloban with the intention of having breakfast in Ma-a, Davao City, a place the bus was going to pass. He recalled that he was on the stepboard of the rear door, clinging to the handlebars and facing the direction of the

driver when a girl passed behind him. When he turned to look back at her, she had already fallen off the bus. The bus was moving slowly at the time and the conductor was issuing tickets inside. It was Manoling Gaviola, Jessie Aguirre, and the dispatcher Quiblat[10] who assisted the girl after her fall. Confronted with his conflicting testimony whether the girl jumped or fell, the witness stated that “she fell and she jumped”.[11] He admitted, however, that he did not know whether she had just boarded or was already inside the bus when he actually noticed her pass behind him.[12]

MANOLING GAVIOLA testified that while he was at his workstation at the Ecoland Terminal that fateful day, he heard the passengers of a Bachelor bus shouting that a passenger had jumped. He rushed to the aid of the passenger. Together with Jessie and the companions of the passenger, they took her to the hospital.

RAUL QUIBLAT,[13] the dispatcher, testified that he saw Lourdes jump from the bus at its rear right side. He testified that he actually saw Lourdes from the time she was in mid-air until she landed on the ground. She first landed on her buttocks and then her head hit the ground.[14] The bus left the terminal an hour after the incident, after the driver was told by the officer-in-charge that the matter had been reported to the management and would be taken care of. The driver was in fact frightened, according to the witness, and did not leave until finally told to do so.

The trial court convicted petitioner, as follows:

WHEREFORE, this Court finds the accused TEOFILO ABUEVA Y CAGASAN, GUILTY beyond reasonable doubt of the crime of RECKLESS IMPRUDENCE RESULTING TO HOMICIDE under Article 365 of the Revised Penal Code which is punishable with Arresto Mayor in its Maximum period as Minimum to Prision Correccional in its Medium Period and accordingly sentence said accused to suffer Two (2) Year[s] Ten (10) months and Twenty (20) Days of Prision Correccional. And as civil liability, accused is held liable and ordered to pay to the surviving heirs or parents of Lourdes Mangruban the following:

1. P50,000.00 for actual expenses for medicine and attending physician’s fees;
2. P4,500.00 as funeral expenses; and
- 3 P50,000.00 as indemnity to (sic) the death of Lourdes Mangruban.
4. The cost.

SO ORDERED.[15]

Pursuant to a Motion for Reconsideration filed by the prosecution, the trial court, in an Order dated March 10, 1995, increased the amount of actual expenses for medicine and attending physician’s fees from P50,000 to P148,202.70.[16]

On appeal, the Court of Appeals affirmed the trial court’s judgment of conviction. But the CA modified the RTC decision by increasing the penalty imposed by one degree, in view of the presence of the qualifying circumstance of failure to lend assistance on the spot to the injured party.[17] From the penalty meted by the RTC of two (2) years, ten (10) months and twenty (20) days of prision correccional,[18] the Court of Appeals imposed the “indeterminate penalty of one (1) year, seven (7) months and eleven (11) days of prision correccional as minimum, to six (6) years, one (1) month and eleven (11) days of prision mayor as maximum.”[19] The dispositive portion of the CA decision states:

WHEREFORE, except for the modification of the indeterminate penalty of the accused-appellant, as above indicated, the judgment of conviction appealed from is hereby AFFIRMED in all other respects.

Costs against accused-appellant.

SO ORDERED.[20]

The Court of Appeals denied petitioner's motion for reconsideration, for lack of merit.

Hence, this petition for review filed by petitioner on the ground that:

IN AFFIRMING THE CONVICTION OF THE PETITIONER AND IN INCREASING THE PENALTY, THE COURT OF APPEALS HAS COMMITTED A MISAPPREHENSION OF FACTS AND HAS DECIDED A QUESTION OF SUBSTANCE IN A WAY PROBABLY NOT IN ACCORD WITH LAW OR WITH THE APPLICABLE DECISIONS OF THE SUPREME COURT.[21]

There are two issues for our resolution: (1) whether or not the prosecution has proven the guilt of the petitioner beyond reasonable doubt; and (2) whether or not the qualifying circumstance, that the offender failed "to lend on the spot to the injured parties such assistance as may be in his hands to give," should be considered against the petitioner.

On the first issue, petitioner urges us to re-examine the factual findings of both the trial and appellate courts. Petitioner contends that the Court of Appeals misapprehended facts and disregarded the evidence presented by the defense. Conviction was allegedly based only on the testimony of Ireneo Mangruban whose testimony should not be given much weight and credit. Ireneo was clearly a biased witness whose testimony was full of inconsistencies, according to petitioner. He reiterates the testimonies of defense witnesses attesting to the fact that Lourdes "jumped off" the bus and should be faulted for what befell her.

In contrast, the prosecution sticks to its version that Lourdes "fell off" the bus as a result of petitioner's reckless disregard for the safety of the passengers, when he started the bus without making sure everyone was properly seated or at least in a secure position. According to the prosecution, petitioner failed to exercise extraordinary care and caution when he drove off without verifying whether the passengers of the bus were already safely seated.

After a careful review of the records, we agree with the factual findings of the trial and appellate courts showing that the victim, Lourdes Mangruban, fell rather than jumped off the bus. The trial court found Ireneo's testimony on this point to be credible and convincing,[22] and declared the petitioner liable for reckless imprudence. The Court of Appeals upheld the prosecution's version regarding the incident, saying that it was more credible and consistent with human experience.[23] This Court will not interfere with the trial court's assessment of the credibility of the witnesses, except where it is shown that the trial court has overlooked some material fact or circumstance that could lead to a different result. This is especially true when said assessment is affirmed by the Court of Appeals.[24]

As held by the appellate court:

The claim of the defense that the deceased jumped off the bus is incredible and contrary to human experience. If it is indeed true that the deceased never intended to take a bus trip with her aunt, she would never have taken a seat normally reserved for passengers and waited until the very last moment when the bus was already moving before informing the conductor that she was getting off. Even assuming that the deceased indeed rushed towards the exit and jumped off the bus, she would have been facing the exit. Had the deceased truly jumped, she would have landed on her feet, and her momentum would have caused her to fall face down. Hence, her injuries should have been located at the frontal area of her body. However, Raul Quiblat, the dispatcher of Bachelor Express, Inc., testified on cross examination that the deceased landed on her buttocks then fell on her back, causing the back of her head to hit the cemented pavement, Quiblat's testimony gave credence to the prosecution's contention that the deceased was standing on the stepboard with her back facing the exit when she fell.[25]

The appellate court also found that the alleged inconsistency in witness Ireneo's testimony is only in a minor

detail. It only involves his location or position inside the bus, relative to that of Lourdes. He remains consistent in his testimony that Lourdes was only on the first stepboard of the bus and that the sudden motion of the bus was what caused his sister to fall. Like the trial and appellate courts, we find this more in consonance with ordinary human experience. The prosecution has provided sufficient, clear and convincing basis for the conclusion that Lourdes fell off the bus due to the reckless act of the petitioner.

Article 365 of the Revised Penal Code states that reckless imprudence consists in voluntarily, but without malice, doing or failing to do an act from which material damage results by reason of inexcusable lack of precaution on the part of the person performing or failing to perform such act, taking into consideration (1) his employment or occupation; (2) his degree of intelligence; (3) his physical condition; and (4) other circumstances regarding persons, time and place.

Petitioner herein is a professional driver who has been in the employ of the bus company for 18 years[26] and has undergone training courses and seminars[27] to improve his skills as a driver. He is expected to be well aware of his responsibilities to his passengers. Not only must he make sure that they reach their destinations on time, he must also ensure their safety while they are boarding, during the entire trip, and upon disembarking from the vehicle.

Hereunder for appreciation of petitioner's liability is a pertinent excerpt from the transcript of his testimony in open court:

COURT: The Court would like to clarify—

Q: Now, did the Court hear you right when you said that after the signal for you to leave was given, your bus has just covered about a distance of six (6) meters when you suddenly heard the shouts that somebody had jumped out of your bus, is that correct?

A: Yes, Your Honor.

Q: Now, according to you actually when you started the engine and you began to move, you left the care, the welfare and safety of your passengers to your conductor, is that correct?

A: Yes, Your Honor.

Q: In other words, you want the Court to understand, as far as you are concerned, you simply concentrated on your driving to move forward without bothering to check on the situation or condition of your passengers on that occasion?

A: I relied on the dispatcher, Your Honor, because before the bus leaves, he sees to it that everything is okay, Your Honor.

Q: That is why, your answer, as far as you are concerned, you simply rely on them, on your part you do not seem to take any pains or trouble?

A: It is only on the dispatcher's order that I follow and on the conductor's advice.

Q: Precisely, that is why on your part you did not anymore take the trouble or bother to check up further as to the actual conditions or situation of your passengers because you just relied completely on your...you allegedly rely only upon your dispatcher or conductor, is that it?

A: Yes, Your Honor.

The lack of care and precaution with which petitioner started the bus is inexcusable.

As held in *People vs. de los Santos*: [28]

A man must use common sense, and exercise due reflection in all his acts; it is his duty to be cautious, careful, and prudent, if not from instinct, then through fear of incurring punishment. He is responsible for such results as anyone might foresee and for acts which no one would have performed except through culpable abandon. Otherwise his own person, rights and property, all those of his fellow-beings, would ever be exposed to all manner of danger and injury.

Having failed to exercise due diligence that resulted in the tragic incident, petitioner's liability for the death of passenger Lourdes Mangruban, as found by the lower courts, must be sustained.

However, while petitioner's recklessness has been sufficiently established, we cannot concur with the ruling of the Court of Appeals that the circumstance defined in the last paragraph of Article 365, Revised Penal Code, has been indubitably proved by the prosecution, with the result that petitioner's sentence was increased by one degree.

The assailed decision curtly ruled on this point, thus: "In finding the accused-appellant guilty, the trial court failed to take into account the qualifying circumstance of failure to lend assistance on the spot to the deceased." [29] Ireneo Mangruban testified that the accused-appellant did not bother to disembark after the accident. [30]

Nothing is said by the CA decision regarding the limiting element in the last paragraph of Article 365, which reads: "The penalty next higher in degree to those provided in this article shall be imposed upon the offender who fails to lend on the spot such help as may be in his hands to give." The obligation under this paragraph, in our view, is dependent on the means in the hands of appellant, requiring adequate proof.

On this point, the appellate court merely relied upon the sparse one-line testimony of Ireneo Mangruban that appellant did not bother to disembark after the accident, [31] and by implication did not assist the injured party. No other witness corroborated his statement on this matter. But there are witnesses who testified to the contrary. The records show that petitioner stated under oath that he alighted from the bus [32] and saw that several people were assisting the injured party. Those who helped included the terminal aide and the dispatcher. [33] Petitioner's testimony here was corroborated by other witnesses who testified that laborers Quintin Borromeo and Manoling Gaviola, together with the bus dispatcher Raul Quiblat and a certain Jessie, assisted the victim. [34] Petitioner saw that Lourdes was carried and boarded onto a public utility vehicle. [35] He testified that after the incident and before the bus left the terminal, he first asked the dispatcher if he could already leave, and the dispatcher told him that he could, since the victim would be brought to the hospital. [36] It took some time (an hour) for the bus to leave the terminal because it waited for the order of the dispatcher. [37] For that length of time the driver surely did not stay rooted in his seat.

The assistance required by Article 365, [38] Revised Penal Code, is one which "may be in the hands of the offender to give." We must therefore take into consideration the type and degree of assistance that the offender, at the time and place of the incident, is capable of giving.

Under the circumstances of this case, we find that petitioner is not a hit-and-run driver. He exerted efforts to see to it that the victim had been attended to. There were several people assisting the victim, including his co-employees working for the bus company. The injured party was carried from the terminal, to a vehicle, then to the hospital. Before petitioner was given clearance by the dispatcher to leave, an hour later, he was assured that the victim was brought already to the hospital. We note that petitioner had a bus full of passengers requiring also his attention. He could only do so much, so that the burden of helping the injured party was shared by the bus company personnel and other good Samaritans.

In sum, we hold that the attendant circumstance of failure to lend assistance defined in the last paragraph of Article 365, Revised Penal Code, was not adequately proved by the evidence for the prosecution. The trial court

did not err in disregarding said circumstance in the sentencing of the accused. However, the penalty imposed on petitioner ought to be modified.

The penalty prescribed in case of homicide resulting from reckless imprudence in the use of a motor vehicle, under par. 2 of Article 365, Revised Penal Code, is prision correccional in its medium and maximum periods, or from two (2) years, four (4) months and one (1) day to six (6) years.[39] Following the provisions of Act No. 4103, the Indeterminate Sentence Law, the penalty to be actually imposed should be reduced as therein provided. Accordingly, petitioner should be sentenced to four (4) months and one (1) day of arresto mayor, as minimum, to four (4) years and two (2) months of prision correccional, as maximum.[40]

WHEREFORE, the assailed decision of the Court of Appeals in CA-G.R. No. 18212, is hereby MODIFIED. Petitioner TEOFILO ABUEVA Y CAGASAN is declared guilty of reckless imprudence resulting in homicide, and he is sentenced to suffer an indeterminate prison term of four (4) months and one (1) day of arresto mayor, as minimum, to four (4) years and two (2) months of prision correccional, as maximum. The award of damages in the amounts of P148,202.70 for actual expenses for medicine and attending physician's fees, P4,500.00 as funeral expenses and P50,000.00 as civil indemnity for the death of Lourdes Mangruban, are AFFIRMED.

No pronouncement as to cost.

SO ORDERED.

Bellosillo, (Chairman), Austria-Martinez, and Callejo, Sr., JJ., concur. Mendoza, J., on official leave.

[1] Rollo, pp. 7-16.

[2] Id. at 18.

[3] CA Rollo, pp. 15-28.

[4] Id. at 13-14.

[5] TSN, May 4, 1993, pp. 19-49.

[6] Kidlat in some parts of the record.

[7] TSN, September 7-8, 1993, pp. 102-153.

[8] TSN, October 13, 1993, pp. 156-181.

[9] TSN, October 14, 1993, pp. 184-199.

[10] Id. at 187.

[11] Id. at 196.

[12] Id. at 192.

[13] TSN, October 15, 1993, pp. 209-228.

[14] Id. at 225 and 228.

[15] CA Rollo, pp. 27-28.

- [16] Records, pp. 100-101.
- [17] REVISED PENAL CODE, Article 365, last paragraph.
- [18] Supra, note 15 at 28.
- [19] Rollo, p. 48.
- [20] Id. at 16.
- [21] Id. at 24.
- [22] CA Rollo, p. 24.
- [23] Rollo, p. 13.
- [24] People vs. Sabalones, 294 SCRA 751, 781 (1998).
- [25] Rollo, pp. 13-14.
- [26] TSN, October 13, 1993, p. 165.
- [27] Id. at 166.
- [28] 355 SCRA 415, 430 (2001), citing People vs. Pugay, 167 SCRA 439, 448 (1988).
- [29] Rollo, p. 16.
- [30] TSN, May 4, 1993, p. 25.
- [31] CA Rollo, p. 105, citing TSN, May 4, 1993, p. 25.
- [32] TSN, October 13, 1993, pp. 164-165.
- [33] Ibid.
- [34] TSN, October 14, 1993, pp. 186-188.
- [35] TSN, October 13, 1993, pp. 164-165.
- [36] Ibid.
- [37] Supra, note 34 at 190.
- [38] As amended by R.A. 1790, June 21, 1957.
- [39] People vs. Moreno, 60 Phil. 712, 718 (1934).
- [40] See People vs. Carmen, 355 SCRA 267, 283 (2001).

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